

*SIXTH CIRCUIT REVIEW***Judicial Transparency: Where Does the Sixth Circuit Rank?**

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The United State Supreme Court's opacity has been a longtime [topic of criticism](#). But a [recent study](#) of the transparency and accountability of the federal circuit courts revealed that the Sixth Circuit comes out on the bottom—higher only than the Supreme Court itself. The Sixth Circuit, like all courts, might be wise to consider some of the study's criticisms to improve the both the perception of the judicial system and its effectiveness.

The study was published by [Fix the Court](#), an organization that advocates for non-ideological fixes that would make the federal courts more open and accountable to the American people. The group is critical of the lack of transparency of our nation's highest court and advocates for solutions such as increasing media and public access, imposing term limits, implementing a code of ethics, mandating financial disclosures, and reforming public appearance policies.

While SCOTUS is its primary reform target, the group published a study in November 2019 to evaluate how the United States courts of appeal stack up in terms of transparency and accountability. It analyzed (1) broadcast access, (2) oral argument calendar and judicial opinion releases, (3) public communication, and (4) workplace conduct to rank the nation's thirteen circuits and the Supreme Court. The Sixth Circuit finished 13th out of the 14 evaluated courts when the study combined all four measures.

In the United States, federal judges are [appointed](#) by the president, confirmed by the Senate, and [serve for life](#). Citizen control of the process is limited to voting for the officials in charge of it. Yet citizens interact with all levels of the judicial system regularly and in potentially profound ways. Thus, ensuring a transparent process that illuminates judicial decision making is critical to infuse accountability into the system and maintain fairness and impartiality.

A key indicator of judicial transparency is public access to court room proceedings and opinions. For high-profile cases, particularly before the Supreme Court, courtroom admission can be nearly impossible due to the high demand for admission. However, the federal courts of appeal have similar access difficulties, albeit for a different reason.

Courts are hearing important cases around the country with profound impacts on large segments of the citizenry. Location, rather than crowding, may make attending proceedings in person prohibitive for many, and thus people rely upon other means of communication by the court.

Once parties argue before the court, judges deliberate and release official opinions as well as the reasoning that led to the decision. Across all circuits, judicial opinions are generally posted for public access on the day they are released by the judges, according to the report. While the judicial opinions articulate the position of the court, oral arguments and party briefing provide important insights into the judicial process itself.

For those that are unable to attend oral arguments in person, broadcast access is of the utmost importance. The D.C. Circuit and the Ninth Circuit are leading the way by offering either live audio of oral arguments (D.C. Circuit) or both live audio and video feeds (Ninth Circuit), according to the report. But live streaming is not the norm. Most courts, including the Sixth Circuit, do not allow live access, but rather post audio files of the arguments later in the day. While not ideal, this is still far better than the Supreme Court, which refrains from posting oral argument audio until the end of the week following argumentation.

In addition to audio and video records of the oral arguments, access to party briefings and supplemental docket information can provide further insight into cases before the federal courts, particularly for people researching the case prior to oral arguments. Surprisingly, this is one realm in which the Supreme Court reigns just that: Supreme. The Supreme Court allows public access to all [docket documents](#) for each case that is pending before or decided by the court. All other federal courts utilize the controversial [Public Access to Court Electronic Records](#) (PACER) system. PACER charges a [universal fee](#), set at the federal level, to anyone wishing to access briefings and other docket information for any circuit court case. Individuals are charged \$0.10 per page (not to exceed the fee for thirty pages). [Some argue](#) that locking public court documents behind a paywall decreases court transparency and harms the credibility of the federal judiciary—something of which all United States courts of appeal are guilty.

While there are automatic fee exemptions for people accruing charges of less than \$30.00 every three months, parties in the case, and other discretionary exemptions, the system has recently come under fire in a case pending appeal before the U.S. Court of Appeals for the Federal Circuit. [Nat'l Veterans Legal Servs. Program v. U.S.](#), 291 F. Supp. 3d 123 (D.C. Cir. 2018), *appeal docketed*, No. 19-01081 (Fed. Cir. Oct. 16,

2018). [While former judges, including Richard Posner, argue](#) that judicial records should be “as widely available as possible” and “wealth should not control access to justice,” [others argue](#) that eliminating PACER fees would only cause an increase in filing fees to make up the lost revenue. Whichever way the court comes out on the issue could have a nationwide impact, potentially turning PACER into a free access system much like the docket system of the Supreme Court—a much more transparent option.

Increasing court transparency is a hotly debated topic. [Some critics argue](#) that allowing live coverage of courtroom proceedings shifts the work of judges from a primarily textual pursuit of reading and writing into one influenced by the emotional power of images, cameras and microphones. At present, oral arguments dwarf in importance to party briefings filed with the court. However, live-streaming may encourage and reward political grandstanding by judges and justices, leading to distrust of judicial motives and tension between judges. But shouldn’t the public be able to witness all aspects of a judicial proceeding—from reading accessible briefings to observing oral arguments—regardless of the impact on judges? Shouldn’t judges be responsible for maintaining the neutrality of the position they accepted in joining the judiciary—even with cameras or microphones present?

In the end, courts should consider transparency a noble pursuit. While the Sixth Circuit may rank poorly in an evaluation of judicial transparency, some small changes, as proposed by the Fix the Court study, could go a long way in improving that standing. Simple changes such as earlier releases of oral argument calendars, allowing live audio and video feeds of oral arguments, and better public communication of happenings within the court would allow the public better insight into the workings of the court. Those efforts, if combined with an improved and more financially accessible PACER system, would greatly improve the judicial transparency of not only the Sixth Circuit but all federal courts of appeal as a whole.